

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BRICK P. SHALAKO HOUSTON,
Plaintiff,
v.
R ZAVALA, et al.,
Defendants.

Case No. 2:20-cv-01455-KJD-NJK

REPORT AND RECOMMENDATION

Pending before the Court is Plaintiff's response to the Court's order to show cause in writing why the Court should not recommend that his *in forma pauperis* status be revoked. Docket No. 20. For the reasons discussed more fully below, the Court **RECOMMENDS** that Plaintiff's *in forma pauperis* status be revoked and that his complaint be dismissed without prejudice unless he pays the full filing fee.

I. BACKGROUND

Plaintiff is a detainee proceeding *pro se* in this action pursuant to 28 U.S.C. § 1915. On August 5, 2020, Plaintiff filed an application to proceed *in forma pauperis* and submitted a complaint. Docket Nos. 1, 1-1; *see also* Docket Nos. 7, 12. On November 9, 2020, the Court granted Plaintiff's application to proceed *in forma pauperis*. Docket No. 13. On January 13, 2021, the Court received Plaintiff's initial partial payment of his filing fee. Docket No. 18.

On February 1, 2021, United States District Judge Gloria M. Navarro found in a distinct case that Plaintiff is a prisoner who, while incarcerated or detained in any facility, has brought at least three actions that were dismissed on the grounds that they were frivolous, malicious, or failed to state a claim upon which relief may be granted. *See Houston v. Downey, et al.*, 2021 U.S. Dist. LEXIS 18546, at *1 & n.1 (D. Nev. Feb. 1, 2021). Accordingly, on February 2, 2021, the Court ordered Plaintiff to show cause in writing why the Court should not recommend that his *in forma pauperis* status be revoked. Docket No. 19. The Court cautioned Plaintiff that, pursuant to 28 U.S.C. § 1915, he could continue to proceed *in forma pauperis* in this case only if he

1 demonstrated that he is in imminent danger of serious physical injury. *See id.* at 1–2. On March
 2 4, 2021, Plaintiff filed the instant response to the Court’s order to show cause. Docket No. 20.

3 II. LEGAL STANDARD

4 Pursuant to the Prison Litigation Reform Act, “once a prisoner has had three actions
 5 dismissed as frivolous or malicious, or for failure to state a claim upon which relief may be granted,
 6 that prisoner is no longer permitted to file an action in forma pauperis unless the prisoner is in
 7 imminent danger of serious physical injury.” *Hoffmann v. Pulido*, 928 F.3d 1147, 1148–49 (9th
 8 Cir. 2019) (citing 28 U.S.C. § 1915(g)). To satisfy the provision requiring imminent danger of
 9 serious physical injury, the prisoner’s complaint must contain allegations of an imminent danger,
 10 *see Andrews v. Cervantes*, 493 F.3d 1047, 1055 (9th Cir. 2007), and those allegations must be
 11 related to the causes of action in the complaint. *See Asemani v. Islamic Republic of Iran*, 2019
 12 WL 4935595, at *1 (D. Haw. Oct. 7, 2019) (collecting cases). The latter requirement means that
 13 the prisoner must show that (1) the imminent danger is fairly traceable to the unlawful conduct
 14 asserted in the complaint; and (2) a favorable outcome would redress that injury. *Pettus v.*
 15 *Moregenthau*, 554 F.3d 293, 298–99 (2d Cir. 2009).

16 III. ANALYSIS

17 Plaintiff submits that the Court should not revoke his *in forma pauperis* status because
 18 Defendants, not the Court, bear the burden of challenging his *in forma pauperis* status. Docket
 19 No. 20 at 1, 3. Plaintiff appears to further submit that the Court may revoke his *in forma pauperis*
 20 status only upon screening his complaint.¹ *Id.* at 1. In addition, Plaintiff submits that good cause
 21 exists not to revoke his *in forma pauperis* status because he cannot afford to pay the filing fee. *Id.*
 22 at 3. Plaintiff submits that the Court should permit him to maintain this case under a payment plan
 23 or grant him eighteen months to pay the filing fee. *Id.*

24 The Court finds that Plaintiff has failed to establish that the Court should not recommend
 25 that his *in forma pauperis* status be revoked. Plaintiff fails to demonstrate that his complaint
 26 contains allegations of an imminent danger and that those allegations are related to the causes of

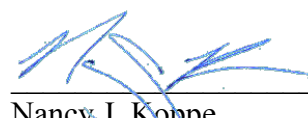
27 ¹ As a litigant proceeding without an attorney, the Court construes Plaintiff’s filing
 28 liberally. *Blaisdell v. Frappiea*, 729 F.3d 1237, 1241 (9th Cir. 2013).

1 action in his complaint. *See Cervantes*, 493 F.3d at 1055; *see also Asemani*, 2019 WL 4935595,
 2 at *1. Further, while a defendant typically bears the burden of challenging a prisoner's *in forma*
 3 *pauperis* status, *see Andrews v. King*, 398 F.3d 1113, 1120 (9th Cir. 2005), the Court may
 4 nonetheless reconsider its prior order granting Plaintiff's *in forma pauperis* application and revoke
 5 his *in forma pauperis* status *sua sponte*. *See* LSR 1-5 ("The court may, either on the motion of a
 6 party or *sua sponte*, after affording an opportunity to be heard, revoke leave to proceed *in forma*
 7 *pauperis* if the party to whom leave was granted . . . has willfully misstated information in the
 8 application to proceed *in forma pauperis* or affidavit"); *see also Owens v. Matthews*, 2017 WL
 9 603183, at *2 (C.D. Cal. Jan. 6, 2017) (citing *King*, 398 F.3d at 1119) (revoking prisoner's *in*
 10 *forma pauperis* status *sua sponte*); *United States v. Martin*, 226 F.3d 1042, 1049 (9th Cir. 2000)
 11 (finding courts have authority to reconsider non-final orders *sua sponte*). Plaintiff has failed to
 12 establish that he may continue to proceed *in forma pauperis* in this case and, therefore, must pay
 13 the full filing fee. *See* 28 U.S.C. § 1914; *see also Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995)
 14 (citing *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987)) ("Although we construe pleadings
 15 liberally in their favor, pro se litigants are bound by the rules of procedure").

16 **IV. CONCLUSION**

17 Accordingly, **IT IS RECOMMENDED** that Plaintiff's *in forma pauperis* status be
 18 revoked and that his complaint be dismissed without prejudice unless he pays the full filing fee.

19 Dated: March 8, 2021

20 
 21 _____
 22 Nancy J. Koppe
 23 United States Magistrate Judge

22 **NOTICE**

23 This report and recommendation is submitted to the United States District Judge assigned
 24 to this case pursuant to 28 U.S.C. § 636(b)(1). A party who objects to this report and
 25 recommendation must file a written objection supported by points and authorities within fourteen
 26 days of being served with this report and recommendation. Local Rule IB 3-2(a). Failure to file
 27 a timely objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951
 28 F.2d 1153, 1157 (9th Cir. 1991).